No. 07-577

FILED
NOV 30 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
Supreme Court of the United States

ROGER BLAKE, M.D.,
Petitioner,

v.

THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER, DR. DANIEL JONES, IN HIS OFFICIAL CAPACITY AS CHANCELLOR OF THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER, JAMES ROY KLUMB, ED BLAKESLEE, THOMAS W. COLBERT, DR. RICHARD A. CROFTS, DR. L. STACY DAVIDSON, JR., DR. D. E. MAGEE, JR., DR. BETTYE HENDERSON NEELY, VIRGINIA SHANTEAU NEWTON, BOB OWENS, AUBREY PATTERSON, ROBIN ROBINSON, SCOTT ROSS, AMY WHITTEN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING AND PAUL TRUSSELL, INDIVIDUALLY AND AS DIRECTOR OF HUMAN RESOURCES OF THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

JOHN T. KITCHENS
Counsel of Record
TOM HUNT COLE
FORMAN PERRY WATKINS
KRUTZ & TARDY LLP
200 South Lamar Street
Suite 100
Jackson, Mississippi 39201
(601) 960-8600
Attorneys for the Respondents

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF THE CASE	2
REASONS WHY THE PETITION SHOULD BE DENIED	6
I. THE EVIDENTIARY RULING PLAYED NO MATERIAL PART IN THE OUTCOME OF THE PETITIONER'S PROCEDURAL DUE PROCESS CLAIM	7
II. THE QUESTION PRESENTED CANNOT BE ADDRESSED IN THIS CASE	8
III. THERE IS NO TRUE CONFLICT WARRANTING CERTIORARI REVIEW AND THE FIFTH CIRCUIT PROPERLY REVIEWED THE EVIDENTIARY RULING FOR ABUSE OF DISCRETION	9
IV. THE PETITION CONTAINS FACTUAL ERRORS	11
V. REVIEW IS UNNECESSARY BECAUSE ANY REMAINING DISAGREEMENT IN THE CIRCUITS IS LIKELY TO RESOLVE ITSELF WITHOUT THE NEED FOR THE INTERVENTION OF THIS COURT	14
CONCLUSION	15

TABLE OF AUTHORITIES

CASES Page

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) 12
Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).....5, 6, 8, 10
Gibbs v. Gibbs, 210 F.3d 491 (5th Cir. 2000)..... 9
Miller v. Drennon, 1992 WL 137578, *5 (4th Cir. 1992)..... 10
Rupe v. Wood, 93 F.3d 1434 (9th Cir. 1996)..... 9, 10
U.S. v. A & S Council Oil Co., 947 F.2d 1128 (4th Cir. 1991)..... 10
U.S. v. Graham, 83 F.3d 1466 (D.C. Cir. 1996)..... 11
U.S. v. Henderson, 409 F.3d 1293 (11th Cir. 2005)..... 10
U.S. v. Lea, 249 F.3d 632 (7th Cir. 2001).... 9
U.S. v. Lee, 315 F.3d 206, 214 (3d Cir. 2003)..... 9
U.S. v. Lynn, 856 F.2d 430 (1st Cir. 1988).. 9
U.S. v. Marvel Johnson Prince-Oyibo, 320 F.3d 494 (4th Cir. 2003)..... 10, 14
U.S. v. Posado, 57 F.3d 428 (5th Cir. 2000)..... 9
U.S. v. Sheffer, 523 U.S. 303 (1998) 11, 14

IN THE

Supreme Court of the United States

No. 07-577

ROGER BLAKE, M.D.,

Petitioner,

v.

THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER, DR. DANIEL JONES, IN HIS OFFICIAL CAPACITY AS CHANCELLOR OF THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER, JAMES ROY KLUMB, ED BLAKESLEE, THOMAS W. COLBERT, DR. RICHARD A. CROFTS, DR. L. STACY DAVIDSON, JR., DR. D. E. MAGEE, JR., DR. BETTYE HENDERSON NEELY, VIRGINIA SHANTEAU NEWTON, BOB OWENS, AUBREY PATTERSON, ROBIN ROBINSON, SCOTT ROSS, AMY WHITTEN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING AND PAUL TRUSSELL, INDIVIDUALLY AND AS DIRECTOR OF HUMAN RESOURCES OF THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER,

Respondents,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

INTRODUCTION

Respondents respectfully request that this Court deny the petition for writ of certiorari seeking review of the unpublished decision of the United States

Court of Appeals for the Fifth Circuit, appearing at App. 1-4. That decision affirmed summary judgment in favor of Respondents in an unpublished opinion of the United States District Court for the Southern District of Mississippi, appearing at App. 5-38. No motion for rehearing or rehearing en banc was filed.

Respondents submit that the academic question now asserted by Petitioner was not squarely presented to the lower courts and had no material bearing on the outcome of the decisions below. A review of the alleged *per se* rule against the admission of polygraph evidence to bolster or impeach a witness would be particularly inappropriate in the undisputed facts of this civil, procedural due process case. Moreover, contrary to the suggestion in the question presented, the court of appeals did not conduct a "harmless error" analysis and did not find **any** error in the district court's evidentiary ruling. Instead, the Fifth Circuit held that no abuse of discretion or denial of any substantive right of Petitioner had occurred.

STATEMENT OF THE CASE

In this §1983 procedural due process employment case, the Petitioner failed to invoke the plenary post termination process afforded by a faculty grievance procedure, a failure which was fatal to such a claim. The material facts are set forth in detail in the district court's opinion. App. 6. Petitioner, a male, non-tenured assistant professor and staff surgeon, had a one year employment contract with Respondent, University Mississippi Medical Center (UMMC).[1] The contract provided, inter alia, that the

[1] Respondents, defendants below, included UMMC, an arm or agency of the state, state officials sued in their official

Petitioner could be terminated for "contumacious conduct." Petitioner engaged in sexual conduct involving a female UMMC resident physician on September 30, 2004.[2] App. 3, 9. After the resident reported the incident, the Petitioner was informed of the allegations against him on October 1, 2004. App. 3, 9. The Petitioner was then suspended with pay and notified in writing of his right to a hearing, a right the petitioner waived. App. 3, 9, 25.

The Petitioner then met with the UMMC Human Resources Director on October 4, 2004 to discuss the allegations and gave a detailed statement regarding his version of events. App. 3, 9, 25. As found by the district court, "during this meeting, Blake was informed of the allegations against him, informed of who made the allegations, and given an opportunity to convey his rendition of events." App. 24. While varying slightly in certain details, Petitioner's recorded statement coincided with the female UMMC resident's statement and confirmed the basic circumstances regarding this inappropriate examination. In addition, as part of a full investigation by the UMMC Human Resource Department and pursuant to UMMC policy, the resident and Petitioner were both given polygraph examinations. App. 3, 9-10.

---

capacities, and state officials, such as the UMMC Human Resources Director, sued in their individual capacities. Putting aside the obvious Eleventh Amendment considerations, for purposes of this brief, they will be referred to jointly as "UMMC."

[2] It is undisputed that the Petitioner, an assistant professor and faculty surgeon, had a female resident inspect his penis inside his personal office, without gloves, and without anyone else present. Due to the nature of the examination and because the resident saw nothing of medical concern, the resident, as the district court pointed out, felt "duped" into examining Petitioner's penis. App. 9.

During the course of investigations, the Petitioner attempted to negotiate his resignation, App. 3, 10-12. Following all procedural requirements and its internal policies, App. 21-29, UMMC ultimately deemed the actions of Petitioner to be unprofessional conduct warranting termination. App. 3, 12. UMMC sent Petitioner a letter on December 10, 2004 advising him of the decision and notifying him of his right to file a grievance with a copy of the grievance procedure. App. 3, 12. As found by the lower courts, the Petitioner opted not to take advantage of the procedure and, instead, filed a §1983 lawsuit against Respondents in the district court, alleging a violation of procedural and substantive due process and a state law breach of contract claim. App. 3.

After full discovery, UMMC filed a comprehensive motion for summary judgment for all defendants along with certain other motions for relief. App. 7. Petitioner responded with additional motions, some evidentiary in nature, App. 7, as well as a response to UMMC's motion for summary judgment. The district court, on Respondents' motions for summary judgment, held in pertinent part that the procedures surrounding Petitioner's employment termination were constitutionally sufficient; that Petitioner was advised of his right to a hearing before an Executive Committee; that he was told of the reason for his proposed termination "in sufficient detail to enable him to show any errors in the allegation of sexual misconduct;" and was advised that the particular female resident had made the allegation. App. 22-25. Moreover, the district court held that after termination, Petitioner "was offered the opportunity to avail himself of the standard grievance procedure offered by UMMC, but waived that right by failing to take advantage of the procedure." App. 27. The Petitioner

"never requested a formal hearing. This failure on Blake's part does nothing to diminish the fact that UMMC complied with procedural due process by making such available to him." App. 27.[3]

The Petitioner had also moved to strike the results of both the resident's polygraph examination and his own exam, which were also attached as a part of the Respondents' evidentiary showing of deposition testimony, affidavits, and documentary exhibits. In this regard, the district court held that "Blake provides little argument in support of these prayers for relief, stating only that they are 'incompetent evidence' and that they are 'inadmissible polygraph examination results.'" App. 17-18. Such challenges must be based on the familiar *Daubert* standards, *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993), and Petitioner's motion to strike "made no arguments based on the factors set forth in *Daubert*." App. 18.

On appeal, the Fifth Circuit affirmed the grant of summary judgment in favor of Respondents, observing that "based on our review of the record, and essentially for the reasons stated in the district court opinion, summary judgment was proper." App. 5. With respect to the district court's denial of the motion to strike, the court of appeals adopted the reasoning of the district court by reference and held that the district court's refusal to strike the polygraph results was not an abuse of discretion, App. 4., the standard of review for evidentiary rulings.

---

[3] Although no fundamental substantive constitutional right was actually implicated, the district court also dismissed the purported substantive due process claim, stating that the investigation and termination process was reasonable and rationally related to a legitimate government interest. App. 30-31.

REASONS WHY THE PETITION SHOULD BE DENIED

The Petition fails to demonstrate any of the factors warranting certiorari review. As threshold matter, a decision by this Court on the admissibility of polygraphs would not be outcome determinative in the case at hand since the evidentiary ruling to admit the polygraphs played no material role in the procedural due process decision below. Instead, the Petitioner's due process claim turned on the undisputed fact that he received full notice of the allegations and an opportunity to be heard, but chose not to invoke this process. As a similarly prefatory bar to certiorari, the question presented should not be addressed in the case at hand since the polygraph results were neither admitted for the truth of their assertions nor reviewed for harmless error. Substantively, there is no genuine conflict warranting review on what is inherently a case-by-case issue properly determined under general *Daubert* standards and reviewed for abuse of discretion. In light of this, the majority of Circuit Courts of Appeal have abandoned a *per se* rule against polygraph admission, and the few courts currently giving lip service to a *per se* rule have allowed polygraph evidence for purposes other than to bolster or attack the credibility of a witness. In the instant case, the polygraph was used only as an initial investigative tool pursuant to standard hospital policy and procedure, and the results of the polygraph examination demonstrated that UMMC conducted a full and complete initial investigation of the incident.

I. THE EVIDENTIARY RULING PLAYED NO MATERIAL PART IN THE OUTCOME OF PETITIONER'S PROCEDURAL DUE PROCESS CLAIM.

The Fifth Circuit's decision, and the district court decision it affirms, are particularly inappropriate springboards for the Petition's request that this Court academically parse the Circuits on various evidentiary rulings concerning polygraph exams. Here, the district court's refusal to strike the results of the polygraph exams given the male surgeon professor and the female resident—submitted in the case along with numerous affidavits, deposition testimony, and documents—had nothing whatsoever to do with the outcome of Petitioner's procedural due process claim on the merits. As found by the district court, the Petitioner was given ample notice of the allegations against him and an opportunity to be heard under constitutionally sufficient procedures—but Petitioner opted not to avail himself of that opportunity. App. 25-29. Accordingly, the fact that the polygraph results were not stricken was not material in any way to the eminently correct outcome on the procedures that existed and were afforded to Petitioner. As the court of appeals correctly held, there was no abuse of discretion in the evidentiary ruling, and the ruling did not affect a substantive right of a party.[4] The polygraph results played no part in whether Petitioner received procedural due process. It is accordingly submitted that if the admission or exclusion of the polygraph results here is divorced from, and cannot arguably change, the

---

[4] The comment to F.R.Ev. Rule 103(a), cited by the Fifth Circuit, succinctly states that "[r]ulings on evidence cannot be assigned as error unless (1) a substantial right is affected . . . ."

outcome of the procedural due process challenge, then this case on its facts is not a good prop for this Court to needlessly wade into discretionary evidentiary thickets.

The Petitioner's current desire for an abstract debate on the admissibility of polygraph examinations is totally unhitched from the material facts of this case and affords no basis for review by this Court. This is particularly true in light of the fact that in the district court, Petitioner made only conclusory statements requesting the alleged inadmissibility of polygraph results, without any detailed presentation or showing under *Daubert* standards. App. 17-18.

II. THE QUESTION PRESENTED CANNOT BE ADDRESSED IN THIS CASE.

The question presented by Petitioner is not asked "in relation to the circumstances of the case" as envisioned by Supreme Court Rule 14. Notwithstanding its incorrect depiction of any split in authority,[5] the question presented cannot be answered under the facts of this case. The polygraph results were not admitted in the district court for the "truth of their assertions." Instead, the polygraph exams merely demonstrated one initial step in the investigative process of a government hospital employee dispute. App. 25. Furthermore, contrary to

---

[5] The majority of Circuit Courts of Appeal permit judicial discretion for evidentiary rulings on polygraph admissibility, with the District of Columbia failing to revisit the issue since this Court's decision in *Daubert* and the Fourth Circuit being the only court of appeal to maintaining a *per se* rule against admitting polygraph examinations to bolster or attack witness credibility.

the suggestion in the Petition, the Fifth Circuit never addressed the question of whether the evidentiary rulings below amounted to "harmless error," because it found no error in the District Court's admission of the polygraphs. App. 4.

III. THERE IS NO TRUE CONFLICT WARRANTING CERTIORARI REVIEW AND THE FIFTH CIRCUIT PROPERLY REVIEWED THE EVIDENTIARY RULING FOR ABUSE OF DISCRETION.

There is no genuine conflict in the Circuit Courts of Appeal that would warrant this Court's exercise of certiorari jurisdiction. The Petition overstates the variance among Courts of Appeal regarding polygraph admissibility and misconstrues its applicability to this case. Such evidentiary rulings inherently depend on case-by-case determinations. The majority of courts appropriately permit judicial discretion in evidentiary rulings regarding polygraph admissibility, as the Fifth Circuit correctly did here, with varying results on admission or exclusion largely attributable to differing facts. *U.S. v. Lynn*, 856 F.2d 430 (1st Cir. 1988) (Ruled abuse of discretion in not allowing cross-examination on polygraph); *U.S. v. Lee*, 315 F.3d 206, 214 (3rd Cir. 2003) (stating that "this Court has not adopted a *per se* exclusionary rule regarding polygraph evidence"); *Gibbs v. Gibbs*, 210 F.3d 491, 500 (5th Cir. 2000) (citing its previous decision in *U.S. v. Posado*, 57 F.3d 428 (5th Cir. 1995), the Fifth Circuit reiterated the fact that it no longer follows a *per se* rule against polygraph admission); *U.S. v. Lea*, 249 F.3d 632, 638 (7th Cir. 2001) (District Courts allowed great deal of discretion in admitting polygraph); *Rupe v. Wood*, 93 F.3d 1434, 1441 (9th Cir. 1996) (not admitting polygraph at

penalty phase of murder trial violated due process rights); *U.S. v. Henderson*, 409 F.3d 1293, 1302-03 (11th Cir. 2005).

Petitioner relies heavily on the Fourth Circuit's *per se* rule against admission of polygraph exams to bolster or impeach the credibility of a witness and disregards the fact that polygraphs are admissible for other purposes. In a case analogous to this one, the Fourth Circuit held in an unpublished opinion that "the polygraph evidence was introduced not to bolster Walters' credibility, or attack Miller's, but to rebut Miller's claim that the County acted arbitrarily in suspending him. Therefore, the polygraph result was admissible." *Miller v. Drennon,* 1992 WL 137578, *5 (4th Cir. 1992) (See also *U.S. v. A & S Council Oil Co.*, 947 F.2d 1128 (4th Cir. 1991) (holding polygraph admissible as an attack on witness opinion not defendant's credibility). In addition to admitting polygraph evidence for certain purposes, the Fourth Circuit, in the case cited by Petitioner, recently acknowledged the change in the law regarding polygraph admission since this Court's decision in *Daubert* and hinted that when the issue presents itself to the en banc court, it will likely abandon the *per se* rule. *U.S. v. Marvel Johnson Prince-Oyibo*, 320 F.3d 494 (4th Cir. 2003) (holding that only the en banc Court has authority to consider whether a *per se* ban is viable after *Daubert*.)

Petitioner also asserts the military courts and the District of Columbia maintain a *per se* rule against the admission of polygraphs. However, courts-martial derive power from a different Article of the Constitution, deal with military offenses, and use different court and evidentiary rules than federal courts of appeal. Therefore, Petitioner's reliance on the mili-

tary's *per se* rule against polygraph admission as conflicting with federal circuits is misplaced. Likewise, the relatively small number of polygraph-related decisions from the District of Columbia, including the case cited by Petitioner,[6] do not conflict with an approach to evidentiary rulings on polygraph examinations that permits judicial discretion.

Moreover, any split in authority regarding whether and under what circumstance polygraphs are admissible does not rise to the level of an intolerable conflict warranting review but amounts to a permissible variance inherent in the determination of evidentiary matters. This Court has already recognized the existence of some discrepancy regarding polygraphs and stated, "Individual jurisdictions [. . . .] may reasonably reach differing conclusions as to whether polygraph evidence should be admitted." *U.S. v. Sheffer*, 523 U.S. 303, 312 (1998) (holding the military's *per se* rule against admitting polygraphs is not unconstitutional but with 5 out of 9 Justices disfavoring a *per se* rule against polygraph admissibility). Thus, any variance in the decisions of lower courts is tolerable and does not warrant the Court's plenary review.

IV. THE PETITION CONTAINS FACTUAL ERRORS.

Despite Petitioner's assertions, the courts below never held that the **polygraph** "satisfied the notice

---

[6] *U.S. v. Graham*, 83 F.3d 1466, 1474 (D.C. Cir. 1996) ("We are not persuaded that the polygraph results would have significantly aided the impeachment. As the district court found, Forgy, 'had already admitted to the deceptions in other contexts in the course of direct examination, and there is a limit to the number of deceptions which operate for impeachment.")

and hearing requirements" of *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), Pet. 2, and never held that the polygraph "afforded sufficient basis for the Court to grant summary judgment against the doctor." Pet. 2. Instead, the district court, in a decision adopted by the Fifth Circuit, found that in the procedural due process context of this case, the polygraph examination merely provided Petitioner one of several opportunities to be heard on the allegations against him. App. 25.

In addition to inaccurately portraying the decisions below, the Petition is less than candid with respect to the material facts. First, the Petition states that the Petitioner never learned the conduct that gave rise to his termination. Pet. 3. As found by the district court, the Petitioner was informed of the allegations against him on October 1, 2004, App. 3, had a meeting with human resources regarding his conduct on October 4, 2004, App.3, and was then given a polygraph regarding the conduct in question, App. 3, 9. Petitioner's attorney was also in negotiations with UMMC in an attempt to arrange for Petitioner's resignation and clear his file of the conduct. App. 3, 10-12. Petitioner was finally given a termination letter on December 10, 2004, which again referenced the conduct that led to his termination. App. 3, 12, 26.

Second, the Petition asserts that UMMC refused to afford Petitioner a due process hearing. Pet. 3. This is directly contrary to the detailed conclusion of the district court. Instead, it was Petitioner that refused a hearing offered him on October 1, 2004 to contest his paid, administrative suspension. App. 3, 24. Petitioner also failed to avail himself to the UMMC grievance procedure, which stated Petitioner was

entitled to a hearing and could call witnesses on his behalf. App. 3, 26-29. Petitioner's "only confrontation was with the polygraph examiner," Pet. 4, because he chose not to avail himself to his right to the additional hearings offered by UMMC. App. 25.

Third, the Petition inaccurately states the reason the polygraph examination results were admitted and the role the polygraphs played in the decisions below. Petitioner states the polygraph was admitted in the District Court to establish contested issues of fact, Pet. 2, and "for the truth of its assertions," Pet. 3; however, as discussed above at pages 7 and 8, the results of the polygraph played no material part in the district courts decision, and the results were mentioned by the court only to show one step in the UMMC's investigative process. App. 25, 30-31. Petitioner misstates the Courts' reliance on the polygraph results as a "confession" and alleges the "polygraph exam stood in place of a trial." To reiterate, neither the Fifth Circuit nor the District Court relied on the ***results*** of the polygraph examinations in deciding the fate of Petitioner's procedural due process or other state law claims. Although the district court stated the polygraph examiner's findings in its recitation of the background facts, App. 10, the Court did not use the results as a factor in summary judgment. Instead, the district court merely considered the polygraph examination process itself as providing Petitioner yet another opportunity to be heard regarding the allegations against him. App. 25.

Finally, Petitioner suggests his polygraph objections were properly preserved in his motions to strike filed in the district court. Pet. 2. As pointed out by the district court, however, the Petitioner failed to

make specific objections to the polygraph results and instead merely moved to strike the same as "not competent" and "inadmissible." App. 17-18. Petitioner also suggests that the Court of Appeals reviewed admission of the polygraph for "harmless error," Pet. 3, when the Fifth Circuit did not find any error and actually held such admission "was *not* an abuse of discretion." App. 4. (emphasis added.)

V. REVIEW IS UNNECESSARY BECAUSE ANY REMAINING DISAGREEMENT IN THE CIRCUITS IS LIKELY TO RESOLVE ITSELF WITHOUT THE NEED FOR THE INTERVENTION OF THIS COURT.

As discussed supra, the question presented does not align with the facts at hand, making this case an improper vehicle to address in general the issue of polygraph admissibility. Moreover, even if this Court were inclined to do so, such review is unnecessary under the circumstances. Given the Fourth Circuit's comments in *U.S. v. Marvel Johnson Prince-Oyibo*, 320 F.3d 494 (4th Cir. 2003) and this Court's holding in *U.S. v. Sheffer*, 523 U.S. 363 (1998), any remaining dissension among the Circuit Courts of Appeal will likely resolve itself.[7] Accordingly, there is no current need for intervention by this Court.

Additionally, emerging advancements in the field of neuroscience offer new developments for "lie

---

[7] As discussed *infra* on page 10, the Fourth Circuit hinted that it may abandon the per se rule against polygraph admission in a case before the en banc court, *Prince-Oyibo*, 320 F.3d 494, and as this Court stated in *Sheffer*, "Individual jurisdictions [. . . .] may reasonably reach differing conclusions as to whether polygraph evidence should be admitted." 523 U.S. at 312.

detection" that will inevitably affect the legal system. As pointed out in the Petition, other neuroscience devices, such as functional magnetic resonance imaging are changing the dynamics of an area once primarily occupied by the polygraph. Pet. 4. A premature decision from this Court regarding the admissibility of lie detectors may have far-reaching results for scientific developments that have yet to be fully tested and critiqued.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JOHN T. KITCHENS
Counsel of Record
TOM HUNT COLE
FORMAN PERRY WATKINS
KRUTZ & TARDY LLP
200 South Lamar Street
Suite 100
Jackson, Mississippi 39201
(601) 960-8600

Attorneys for the Respondents